



Weighing the Impact of Simple Possession of Marijuana

Trends and Sentencing in the Federal System

United States Sentencing Commission

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This report assesses recent trends in federal sentencing for simple possession of marijuana, as well as how prior sentences for simple possession affect criminal history calculations under the guidelines.

Introduction

In a 2016 study, the United States Sentencing Commission found a dramatic increase in federal sentencing for simple possession of marijuana between fiscal years 2008 and 2013.¹ Simple possession of marijuana refers to possessing a small amount of marijuana to consume or use, but without an intent to sell or give it to another person.

Over the last several decades, marijuana possession laws have been changing in various jurisdictions. Many states and territories now permit marijuana possession for certain medical purposes, and some have decriminalized or legalized possession of small quantities of marijuana for personal use.² Under federal law, however, marijuana remains a Schedule I controlled substance under the Controlled Substances Act (CSA),³ and possession of marijuana for medical or personal use remains illegal.⁴

Nonetheless, federal policy regarding marijuana possession appears to be shifting. On October 6, 2022, President Joseph Biden granted a pardon to current U.S. citizens and lawful permanent residents convicted of the federal offense of simple possession of marijuana.⁵ The President also asked for expedited review of marijuana's scheduling under the CSA.⁶ In addition, the U.S. Department of Justice generally has treated marijuana possession offenses as a low enforcement priority in recent years.⁷

Simple Possession of Marijuana Sentences

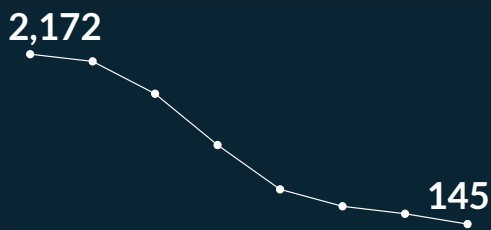
Given these developments, this report updates the Commission's 2016 study and examines sentences for simple possession of marijuana offenses in two respects. Part One of the report assesses trends in federal sentencing for simple possession of marijuana since fiscal year 2014. The report then describes the demographic characteristics, criminal history, and sentencing outcomes of federal offenders sentenced for marijuana possession in the last five fiscal years and compares them to federal offenders sentenced for possession of other drug types.

Part Two of the report examines how prior sentences for simple possession of marijuana (under both federal and state law) affect criminal history calculations under the federal sentencing guidelines for new federal offenses. The report identifies how many federal offenders sentenced in fiscal year 2021—for any crime type—received criminal history points under Chapter Four of the *Guidelines Manual* for prior marijuana possession sentences. The report then assesses the impact of such points on those offenders' criminal history category, one of the two components used to establish the sentencing guideline range.

Key Findings

Federal Sentencings for Simple Possession of Marijuana

1 The number of federal offenders sentenced for simple possession of marijuana is relatively small and has been declining steadily from 2,172 in fiscal year 2014 to only 145 in fiscal year 2021.



2 The overall trends were largely driven by one district, the District of Arizona, which accounted for nearly 80 percent (78.9%) of all federal marijuana possession sentencings since 2014. As the number of such cases in the District of Arizona declined from a peak of 1,916 in 2014 to just two in fiscal year 2021, the overall federal caseload followed a similar pattern.

3 Federal offenders sentenced for marijuana possession in the last five fiscal years tended to be male (85.5%), Hispanic (70.8%), and non-U.S. citizens (59.8%). A little over two-thirds (70.1%) were sentenced to prison; the average prison sentence imposed was five months.

4 As of January 2022, no offenders sentenced solely for simple possession of marijuana remained in the custody of the Federal Bureau of Prisons.

Impact of Prior Sentences for Simple Possession of Marijuana

5 In fiscal year 2021, 4,405 federal offenders (8.0%) received criminal history points under the federal sentencing guidelines for prior marijuana possession sentences. Most of the prior sentences (79.3%) were for less than 60 days in prison, including non-custodial sentences. Furthermore, ten percent (10.2%) of these 4,405 offenders had no other criminal history points.

6 The criminal history points assigned under the federal sentencing guidelines for prior marijuana possession sentences resulted in a higher criminal history category for 1,765 of the 4,405 offenders (40.1%).

PRIOR MARIJUANA POSSESSION SENTENCES RESULTED IN A HIGHER CHC FOR 40.1% OF FEDERAL OFFENDERS WITH SUCH SENTENCES IN FY21



7 Of the 1,765 offenders whose criminal history category was impacted by a prior marijuana possession sentence, most were male (94.2%), U.S. citizens (80.0%), and either Black (41.7%) or Hispanic (40.1%).

8 Nearly all (97.0%) of the prior marijuana possession sentences were for state convictions, some of which were from states that have changed their laws to decriminalize (22.2%) or legalize (18.2%) marijuana possession, states that allow for expungement or sealing of marijuana possession records (19.7%), or some combination thereof. Prior sentences for marijuana possession from these states resulted in higher criminal history calculations under the federal sentencing guidelines for 695 offenders.

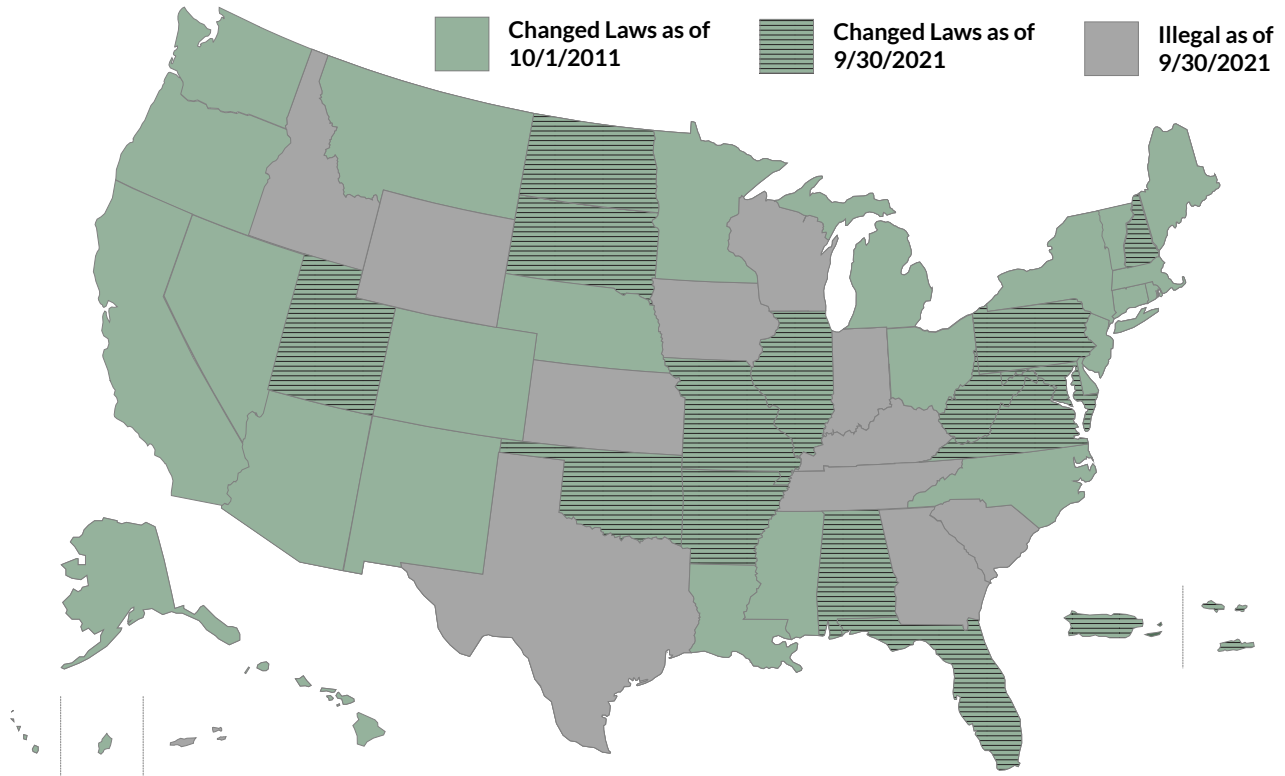
Background

Marijuana Possession Laws in States and Territories

Over the last several decades, states and territories increasingly have changed their laws regarding marijuana possession. For example, 28 states and territories

had enacted medical marijuana laws and/or decriminalized marijuana possession for personal use by the end of fiscal year 2011 (Figure 1).⁸ A decade later, 44 states and territories had medical marijuana, decriminalization, or legalization provisions.⁹

Figure 1. Marijuana Possession Laws by State/Territory



Recent developments have signaled a potential shift in federal policy on marijuana offenses.

States and territories differ in terms of what marijuana possession is permitted—if any.¹⁰ As of the end of fiscal year 2021, possession of marijuana remained illegal for all purposes in 12 states and territories.¹¹ In nine states and territories, possession of marijuana is permitted solely for medical purposes.¹² In the 14 states and territories that have decriminalized marijuana, possession of a small quantity of marijuana remains a violation of law, but it is subject to a fine with no possibility of incarceration.¹³ An additional 21 states and territories have legalized possession of small quantities of marijuana for personal use, eliminating all penalties.¹⁴

Some states and territories also have enacted laws allowing for the expungement or sealing of prior marijuana arrest and conviction records. As of the end of fiscal year 2021, 19 states and territories had such provisions.¹⁵

Federal Marijuana Possession Laws

Under federal law, possession of marijuana remains illegal. The federal Controlled Substances Act includes marijuana as a Schedule I¹⁶ controlled substance.¹⁷ Under 21 U.S.C. § 844 (Penalties for simple possession), it is “unlawful for any person knowingly or intentionally to possess a controlled substance.”¹⁸ Individuals who violate this provision by possessing marijuana face imprisonment of up to one year, and a minimum fine of \$1,000—a Class A misdemeanor.¹⁹ Repeat offenders face imprisonment of up to two or three years—a Class E felony.²⁰

Although marijuana possession remains prohibited under federal law, recent developments have signaled a potential shift in federal policy on such offenses. On October 6, 2022, President Biden granted

a “full, complete, and unconditional pardon” to all current U.S. citizens and lawful permanent residents who committed or were convicted of “the offense of simple possession of marijuana in violation of the Controlled Substances Act, as currently codified at 21 U.S.C. § 844.”²¹ In a statement that same day, the President announced that he asked the Secretary of Health and Human Services and the Attorney General to complete an expedited review of how marijuana is scheduled under the CSA.²² Recent legislative proposals similarly have aimed to remove marijuana from the Controlled Substances Act schedules, eliminate criminal penalties for marijuana offenses, and expunge prior marijuana convictions.²³

In addition, the U.S. Department of Justice (DOJ) generally has treated marijuana possession offenses as a low enforcement priority in recent years. In 2009, Deputy Attorney General David Ogden advised prosecutors not to focus federal resources on individuals in compliance with state laws for medical marijuana.²⁴ In 2013, Deputy Attorney General James Cole advised prosecutors to largely defer to states and localities with respect to personal use of marijuana, and instead use federal prosecutions for targeted priorities, such as drug trafficking cases.²⁵ In 2018, Attorney General Jefferson Sessions rescinded the prior guidance;²⁶ however, Attorney General Merrick Garland more recently stated that simple possession of marijuana is not a DOJ priority.²⁷

Part One: Federal Sentencings for Simple Possession of Marijuana

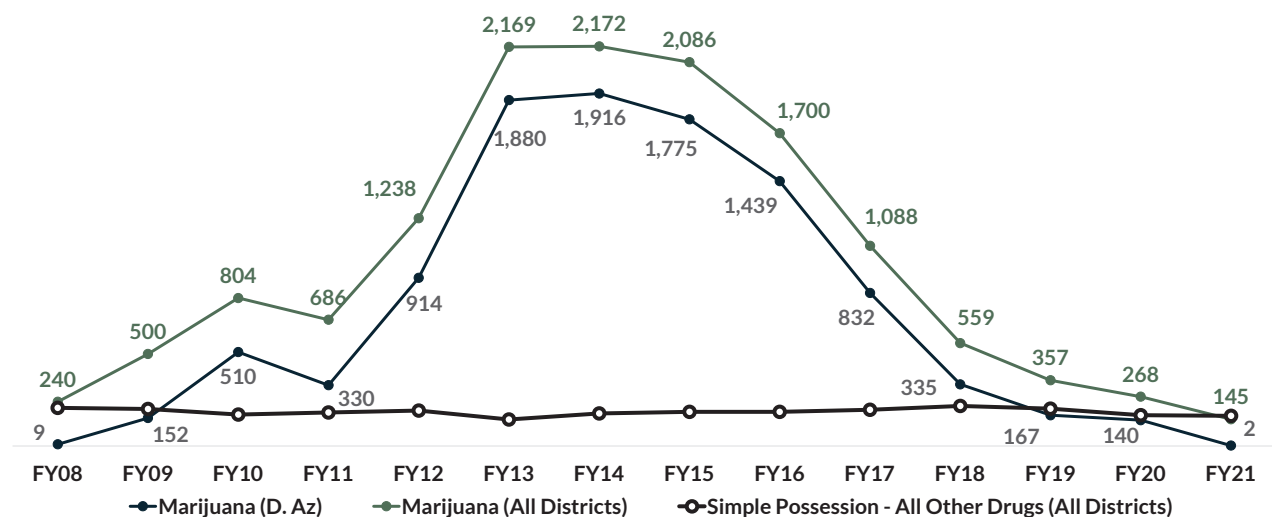
This part of the report examines sentencings for the federal offense of simple possession of marijuana. In a prior report, the Commission found that the number of federal offenders sentenced for simple possession of marijuana had increased markedly, from 240 offenders in fiscal year 2008 to 2,169 offenders in fiscal year 2013.²⁸ The report also found that most marijuana possession offenders in fiscal year 2013 were arrested at or near the U.S./Mexico border with large quantities of marijuana and ultimately sentenced in the District of Arizona.²⁹

The District of Arizona continued to account for the largest share (78.9%) of all federal marijuana possession offenders

sentenced from fiscal year 2014 through fiscal year 2021. However, following the steep rise in sentencings between fiscal years 2008 and 2013, the number of marijuana possession sentencings in that district declined steadily from 1,916 in fiscal year 2014 to just two cases in fiscal year 2021 (Figure 2).

Across all judicial districts, the overall number of marijuana possession sentencings followed the same pattern, declining from a high of 2,172 in fiscal year 2014 to a low of 145 in fiscal year 2021.³⁰ Meanwhile, the number of offenders sentenced for simple possession of all other drug types remained steady across both study periods (Figure 2).

Figure 2. Federal Marijuana Possession Sentencings

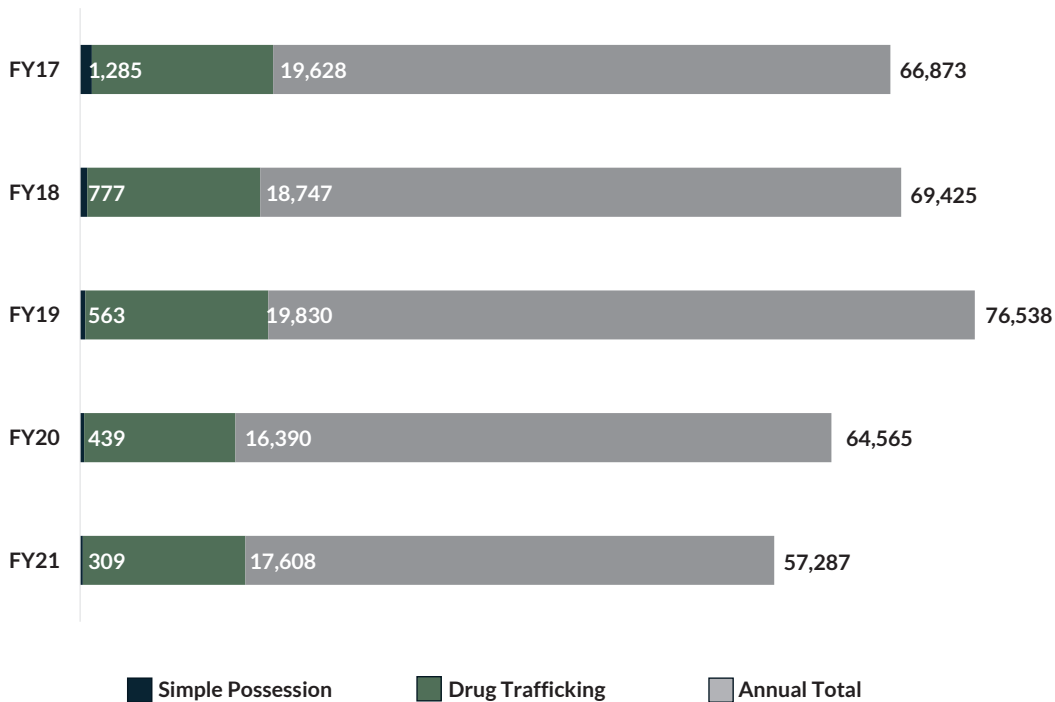


Comparison of Marijuana Possession Offenders and All Other Possession Offenders (Fiscal Years 2017–2021)

Using data from the last five fiscal years, the Commission then assessed whether federal offenders sentenced for simple possession of marijuana differed from federal offenders sentenced for simple possession of all other drug types.³¹ Between fiscal years 2017 and 2021, a total

of 2,417 federal offenders were sentenced for simple possession of marijuana,³² and 948 were sentenced for simple possession of other drug types.³³ Combined, these simple possession offenders accounted for less than two percent of federal sentencings annually, and the proportion declined each year (Figure 3). By way of comparison, drug trafficking offenders consistently accounted for approximately 25 to 30 percent of federal sentencings during the same period.

Figure 3. Drug Cases as Share of Federal Sentencing Caseload



Demographic Characteristics and Criminal History

The demographic characteristics of marijuana possession offenders differed from all other drug possession offenders in several respects (Table 1).³⁴ Hispanic offenders accounted for the largest share of marijuana possession offenders (70.8%), while White offenders accounted for the largest share (53.4%) of all other drug possession offenders. In addition, three-fifths (59.8%) of marijuana possession offenders were non-U.S. citizens, as compared to only 5.2 percent of all other drug possession offenders. Some of these

demographic differences were even more marked in the District of Arizona. For example, 95.8 percent of marijuana possession offenders sentenced in that district were Hispanic and 86.5 percent were non-U.S. citizens.

The two groups differed in terms of gender and age as well. One-third of all other drug possession offenders were female, more than double the percentage of female marijuana possession offenders (14.5%). On average, marijuana possession offenders were younger at the time of sentencing (29 years) than all other drug possession offenders (37 years).

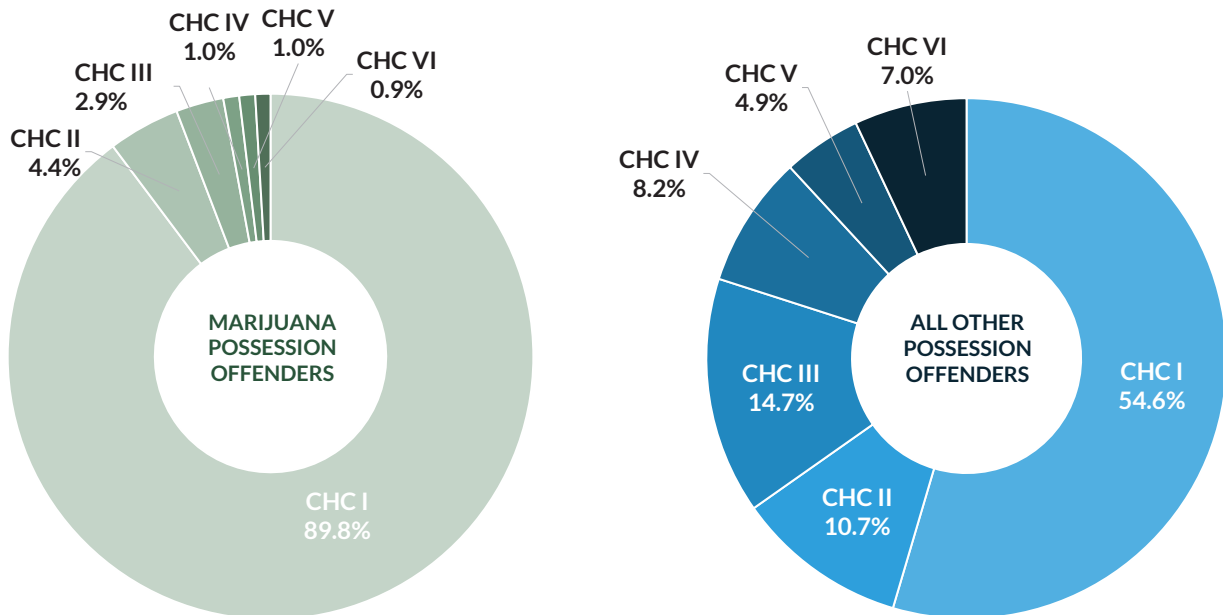
Table 1. Demographics of Marijuana Possession Offenders and All Other Drug Possession Offenders (Fiscal Years 2017–2021)

Race/Ethnicity	Marijuana Possession Offenders (n=2,417)	All Other Possession Offenders (n=948)
White	11.8%	53.4%
Black	15.1%	18.9%
Hispanic	70.8%	18.3%
Other	2.4%	9.4%
Citizenship		
U.S. Citizen	40.2%	94.8%
Non-U.S. Citizen	59.8%	5.2%
Gender		
Male	85.5%	67.0%
Female	14.5%	33.0%
Age at Sentencing		
Average	29	37

Marijuana possession offenders sentenced between fiscal years 2017 and 2021 differed from all other drug possession offenders in terms of their Criminal History Category (CHC)

distribution (Figure 4). Almost 90 percent of all marijuana possession offenders were in the lowest category, CHC I. By contrast, slightly over half (54.6%) of all other drug possession offenders were in CHC I.

Figure 4. Criminal History Category of Marijuana Possession Offenders and All Other Drug Possession Offenders (Fiscal Years 2017–2021)



Sentencing Outcomes

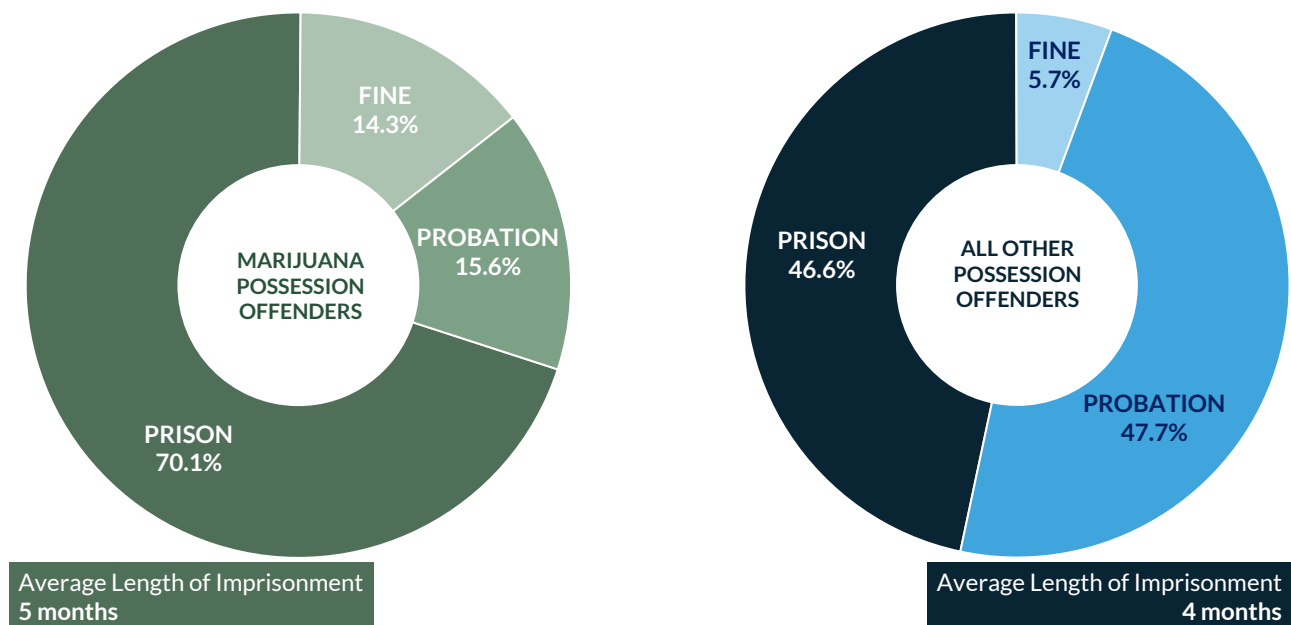
The guideline applicable to simple drug possession offenses is §2D2.1, which provides for a base offense level of four for offenses involving marijuana.³⁵ The guideline contains no specific offense characteristics that would increase the offense level. Among marijuana possession offenders sentenced between fiscal years 2017 and 2021, the average final offense level was two.³⁶ The guideline sentencing range for final offense level 2 and CHC I is zero to six months.³⁷

During the last five fiscal years, most marijuana possession offenders (70.1%) were sentenced to a term of imprisonment, while 29.9 percent were sentenced to either probation or a fine only (Figure 5). For those who received a sentence of imprisonment, the average prison sentence imposed was five months.

The average final offense level for all other drug possession offenders was slightly higher at four. The guideline sentencing range for final offense level 4 and CHC I is also zero to six months.³⁸ A little less than half (46.6%) of all other drug possession offenders were sentenced to a term of imprisonment, while slightly more than half (53.4%) received a sentence of either probation or a fine only. For those who received a sentence of imprisonment, the average prison sentence imposed was four months.

Citizenship differences may explain the higher rate of probation sentences among all other drug possession offenders as compared with marijuana possession offenders. A prior Commission study found that non-U.S. citizens were less likely to receive community-based sentences and more likely to receive prison terms.³⁹

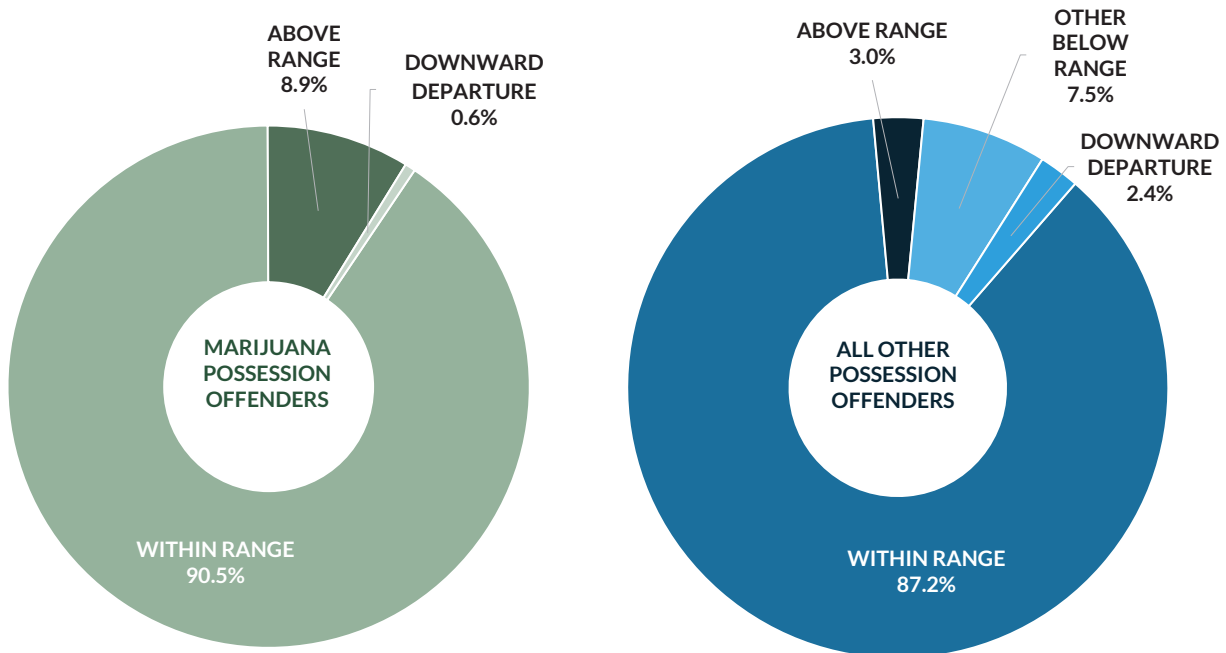
Figure 5. Type of Sentence Imposed (Fiscal Years 2017–2021)



Consistent with the fact that most marijuana possession offenders had a guideline sentencing range of zero to six months, the vast majority of marijuana possession offenders were sentenced within the guideline range (90.5%) (Figure 6).⁴⁰ Similarly, 87.2 percent of all other drug possession offenders were sentenced within the guideline range.

Due to the relatively short average prison sentences for marijuana possession offenders, no one sentenced for simple possession of marijuana in the last five years was in Federal Bureau of Prisons (BOP) custody as of January 2022.⁴¹ As of January 2022, 19 offenders were serving time for simple possession of marijuana plus another offense.

Figure 6. Sentences Relative to the Guideline Range (Fiscal Years 2017–2021)



Part Two: Impact of Prior Sentences for Simple Possession of Marijuana

This part of the report assesses how prior sentences for simple possession of marijuana affect criminal history calculations under the federal sentencing guidelines for new federal offenses. To assess the impact, the Commission identified federal offenders sentenced in fiscal year 2021—for any crime type—who received criminal history points under §4A1.1 of the guidelines for prior marijuana possession sentences.⁴²

For this analysis, the Commission used criminal history information from the Presentence Reports (PSR)⁴³ of the 54,991 offenders sentenced in fiscal year 2021 for whom a PSR was prepared.⁴⁴ Using a combination of optical character recognition (OCR), indexing technology,⁴⁵ and staff review, the Commission identified 4,405 offenders (8.0%) sentenced in fiscal year 2021 who had at least one prior sentence for simple possession of marijuana that received criminal history points under §4A1.1.⁴⁶

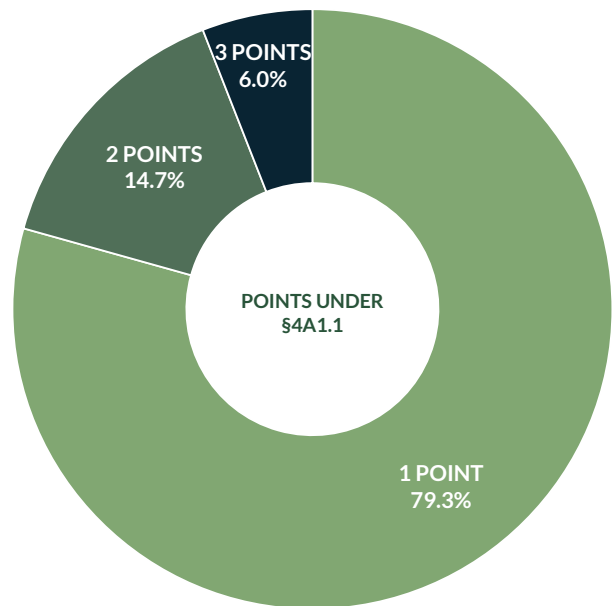
Summary of Prior Sentences for Simple Possession of Marijuana

Of the 4,405 offenders with a countable prior sentence for marijuana possession, approximately three-quarters (76.5%) had one such prior sentence, while nearly one-quarter (23.5%) had two or more. Among the 4,405 offenders, there were 5,878 countable prior sentences for simple possession of marijuana. Only three percent (3.0%) of the prior marijuana possession sentences were for federal convictions. The vast majority (97.0%) were from states or territories (collectively referred to as "states" for the analysis in this section).⁴⁷

The majority (79.3%) of the 5,878 prior marijuana possession sentences ("marijuana priors") were assigned one point under §4A1.1(c), which applies to any prior sentence of less than 60 days' imprisonment, including non-custodial sentences (Figure 7).⁴⁸ An additional 14.7 percent of the marijuana priors were assigned two points under §4A1.1(b), which applies to prior sentences of at least 60

days' imprisonment,⁴⁹ and 6.0 percent of the marijuana priors were assigned three points under §4A1.1(a), which applies to prior sentences of imprisonment exceeding one year and one month.⁵⁰

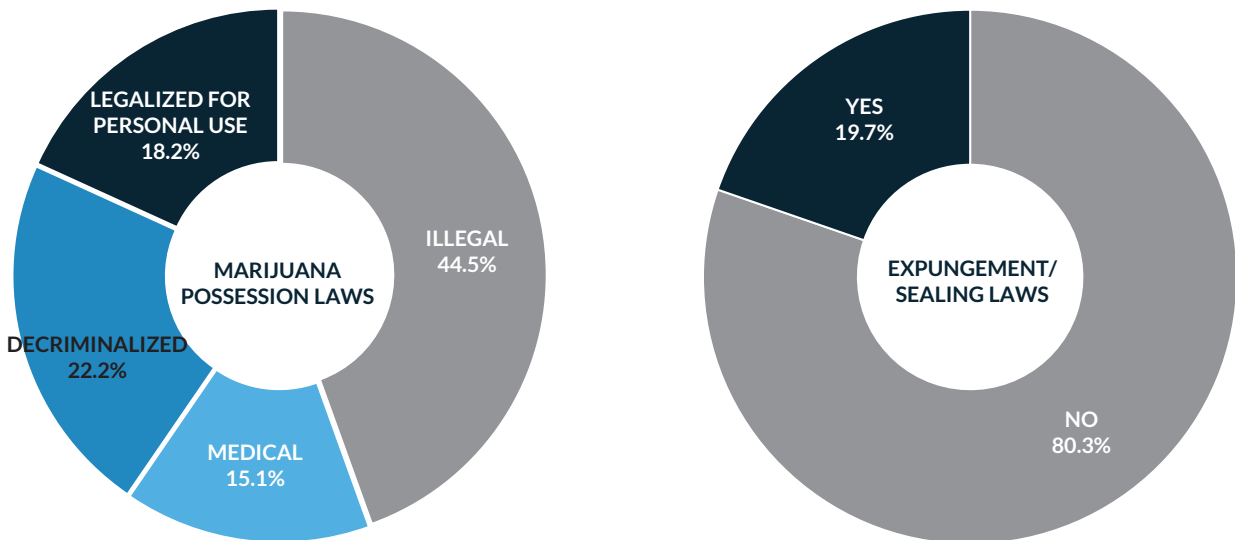
Figure 7. Criminal History Points Assigned to Marijuana Priors (Fiscal Year 2021)



The largest share of marijuana priors (44.5%) were from states in which marijuana possession remained illegal for any purpose as of the end of fiscal year 2021 (Figure 8).⁵¹ An additional 15.1 percent were from states that changed their laws to allow for medical marijuana use. Another 22.2 percent came from states that have decriminalized marijuana

possession, while the remaining 18.2 percent came from states that legalized personal use of marijuana.⁵² Less than one-quarter (19.7%) of the marijuana priors were from states that allow for expungement or sealing of prior marijuana possession convictions.

Figure 8. Percentage of Marijuana Priors by State Law as of September 30, 2021



Comparison of Fiscal Year 2021 Offenders with at Least One Criminal History Point

The Commission then considered whether the 4,405 offenders who received points for prior marijuana possession sentences differed from offenders sentenced in fiscal year 2021 who had criminal history points, but did not receive points from prior marijuana possession sentences. Among the 54,991 offenders sentenced in fiscal year 2021 for whom a PSR was prepared, 32,584 received criminal history points for prior sentences other than marijuana possession.

Demographic Characteristics

Fiscal year 2021 offenders who received criminal history points for at least one marijuana prior differed from those whose criminal history points did not include a marijuana prior in terms of

certain demographic characteristics (Table 2). Almost half of those with a marijuana prior were Black (47.0%) and nearly one-third were Hispanic (31.1%). Among those without a marijuana prior, almost half were Hispanic (48.6%) and approximately one-quarter were Black (26.2%). White offenders accounted for about one-fifth of both groups.

With respect to citizenship, most offenders with a marijuana prior were U.S. citizens (86.3%), compared to approximately two-thirds of offenders without a marijuana prior (65.7%). The average age at sentencing for offenders with a marijuana prior was 33 years, compared to 37 years for offenders who did not have a marijuana prior.

Table 2. Demographics of Offenders with Criminal History Points (Fiscal Year 2021)

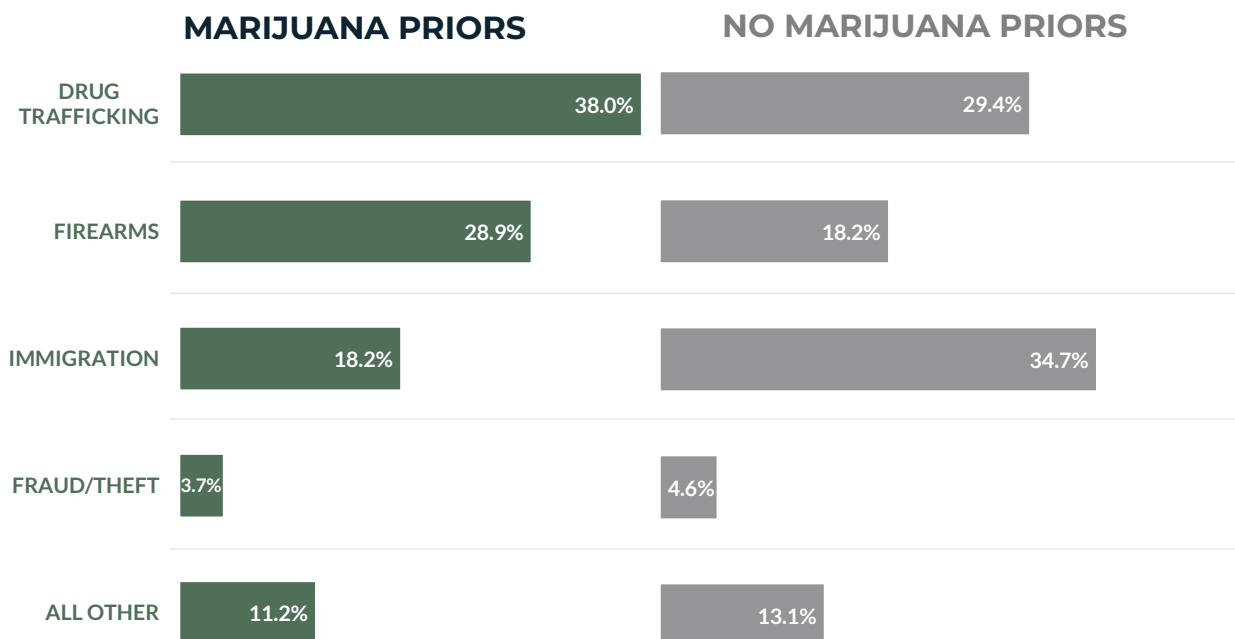
	Marijuana Priors (n=4,405)	No Marijuana Priors (n=32,584)
Race/Ethnicity		
White	19.5%	21.5%
Black	47.0%	26.2%
Hispanic	31.1%	48.6%
Other	2.4%	3.7%
Citizenship		
U.S. Citizen	86.3%	65.7%
Non-U.S. Citizen	13.7%	34.3%
Gender		
Male	93.5%	90.7%
Female	6.5%	9.3%
Age at Sentencing		
Average	33	37

Crime Type and Criminal History

Offenders with a marijuana prior also differed from those without in terms of the instant federal crime type. Drug trafficking was the most common crime type (38.0%) among fiscal year 2021 offenders with a marijuana prior, followed by firearms

(28.9%) and immigration offenses (18.2%) (Figure 9). Among offenders without a marijuana prior, immigration was the most common crime type (34.7%), followed by drug trafficking (29.4%) and firearms (18.2%).

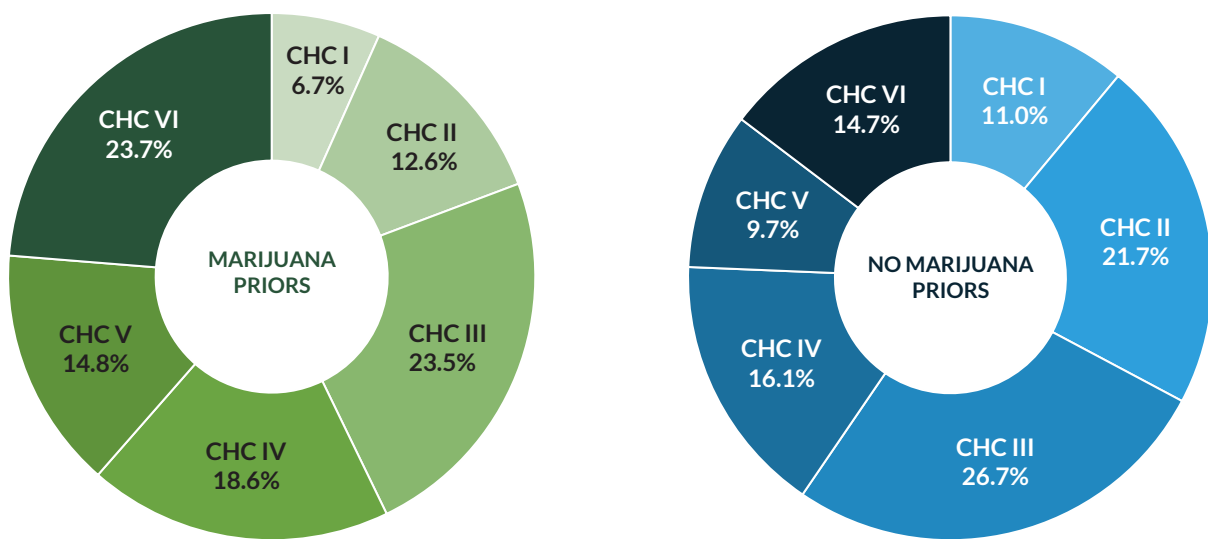
Figure 9. Crime Type of Offenders with Criminal History Points (Fiscal Year 2021)



Offenders with a marijuana prior had more extensive criminal histories than offenders without. Offenders with a marijuana prior were less likely to be in CHCs I and II (19.3%) compared to

offenders without a marijuana prior (32.7%), and more likely to be in CHC IV or higher (57.1% compared to 40.5%) (Figure 10).

Figure 10. Criminal History Category of Offenders with Criminal History Points (Fiscal Year 2021)



Impact of Prior Marijuana Possession Sentences on Criminal History Calculations

The Commission assessed how prior marijuana possession sentences affected offenders' criminal history scores and criminal history categories under the guidelines. To calculate a criminal history score for an offender, courts assign one, two, or three points to any qualifying prior sentences.⁵³ In addition, if the offender committed the instant federal offense while still serving a sentence in another case (for example, while on probation or parole), two

more "status points" are added.⁵⁴ The total criminal history score then determines the offender's placement in one of six criminal history categories. For this analysis, the Commission separated the criminal history points assigned to marijuana priors from all other criminal history points assigned (i.e., points for prior sentences for offenses other than marijuana possession and any status points).

Offenders without a marijuana prior had an average total criminal history score of seven points. Offenders with a marijuana prior had an average of two points for prior marijuana possession sentences and seven other criminal history

points, for a total criminal history score of nine (Table 3). Notably, one-in-ten offenders (10.2%) with a marijuana prior received all their criminal history points solely from prior marijuana possession sentences; they had no other countable criminal history.

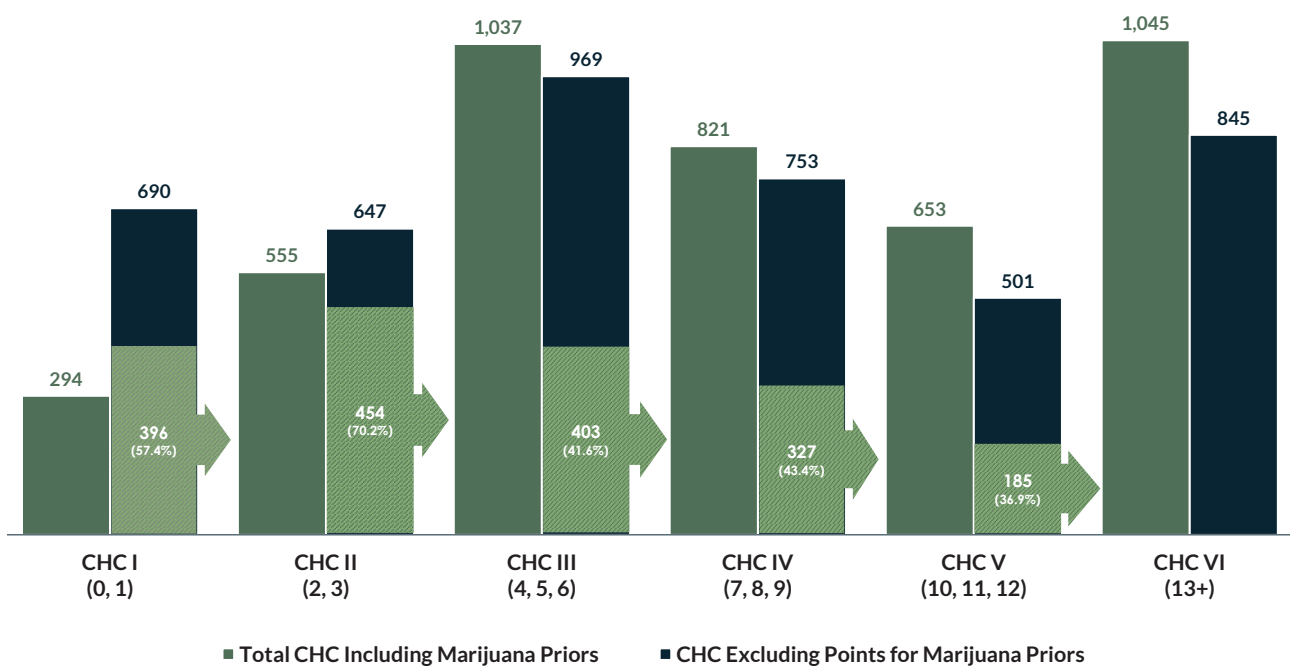
Table 3. Criminal History Points (Fiscal Year 2021)

	Marijuana Priors (n=4,405)	No Marijuana Priors (n=32,584)
Points for Prior Marijuana Possession Sentences		
Average	2	0
Points for Other Prior Sentences and Status Points		
Average	7	7

The points assigned to prior marijuana possession sentences resulted in higher criminal history categories for 1,765 of the 4,405 offenders (40.1%). For example, 454 offenders had two or three points for other prior sentences, including any status

points, and would be in CHC II based on those points. With the inclusion of points for prior marijuana possession sentences, those 454 offenders ultimately were assigned to CHC III or higher at sentencing (Figure 11).

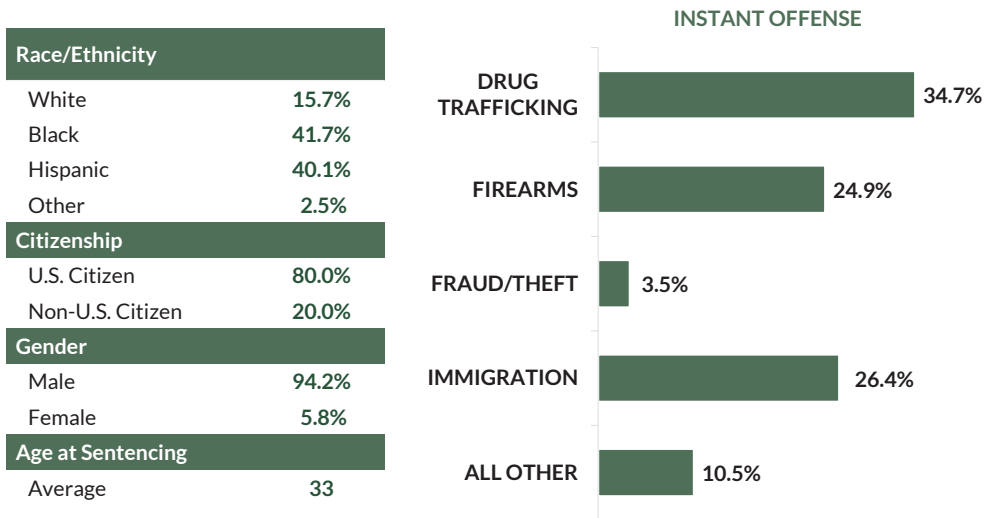
Figure 11. Criminal History Categories of Offenders with Marijuana Priors (Fiscal Year 2021)



Most of the 1,765 offenders whose criminal history category was impacted by prior marijuana possession sentences were male (94.2%), U.S. citizens (80.0%), and

either Black (41.7%) or Hispanic (40.1%) (Figure 12). Most were convicted of three primary crime types: drug trafficking (34.7%), immigration (26.4%), or firearms (24.9%).

Figure 12. Demographics and Crime Type of Offenders with Higher Criminal History Categories Due to Marijuana Priors (n=1,765)



Prior Marijuana Possession Sentences from States that Have Changed Laws

The Commission also conducted three additional impact analyses focused solely on the criminal history points assigned to prior marijuana possession sentences from states and territories that have changed their laws regarding marijuana possession. The first analysis considered marijuana priors from states that allowed for expungement or sealing

of marijuana possession records as of the end of fiscal year 2021.⁵⁵ The second analysis considered marijuana priors from states that legalized and/or decriminalized marijuana possession as of the end of fiscal year 2021.⁵⁶ Because these groups of states largely overlap, the third analysis considered marijuana priors from states that changed their laws regarding marijuana in any of these ways: providing for expungement or sealing and/or legalizing or decriminalizing marijuana possession.

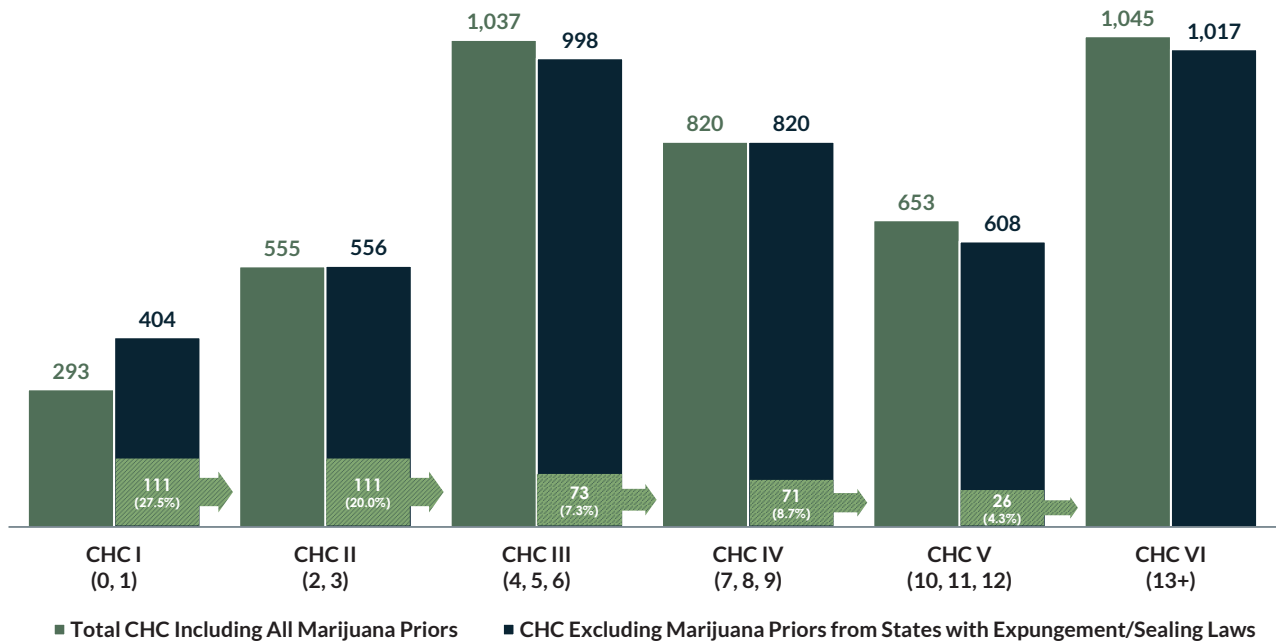
Expungement/Sealing Laws

A total of 933 offenders were assigned points for prior marijuana possession sentences from states that

have expungement or sealing laws for marijuana possession records.⁵⁷ For 392 of the 933 offenders, the points assigned to these prior sentences resulted in a higher criminal history category (Figure 13).

Figure 13. Criminal History Categories of Offenders with Marijuana Priors (Fiscal Year 2021)

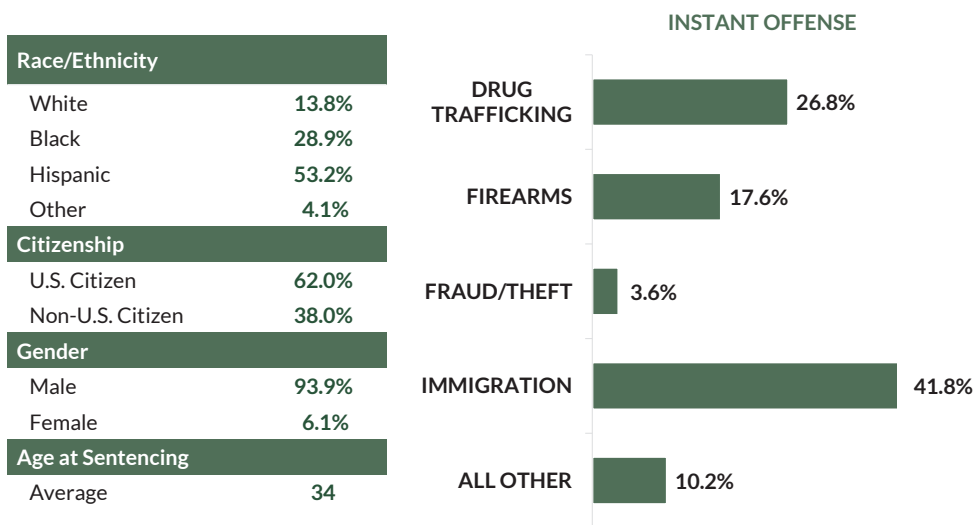
Impact of Points from States with Expungement/Sealing Laws



About half of these 392 offenders were Hispanic (53.2%), and almost one-third were Black (28.9%). Almost two-thirds of those offenders (62.0%) were U.S. citizens. Over three-quarters of the offenders (86.2%)

were convicted of one of three primary crime types: immigration (41.8%), drug trafficking (26.8%), or firearms (17.6%) (Figure 14).

Figure 14. Demographics and Crime Type of Offenders with Higher Criminal History Categories Due to Marijuana Priors from States with Expungement/Sealing Laws (n=392)



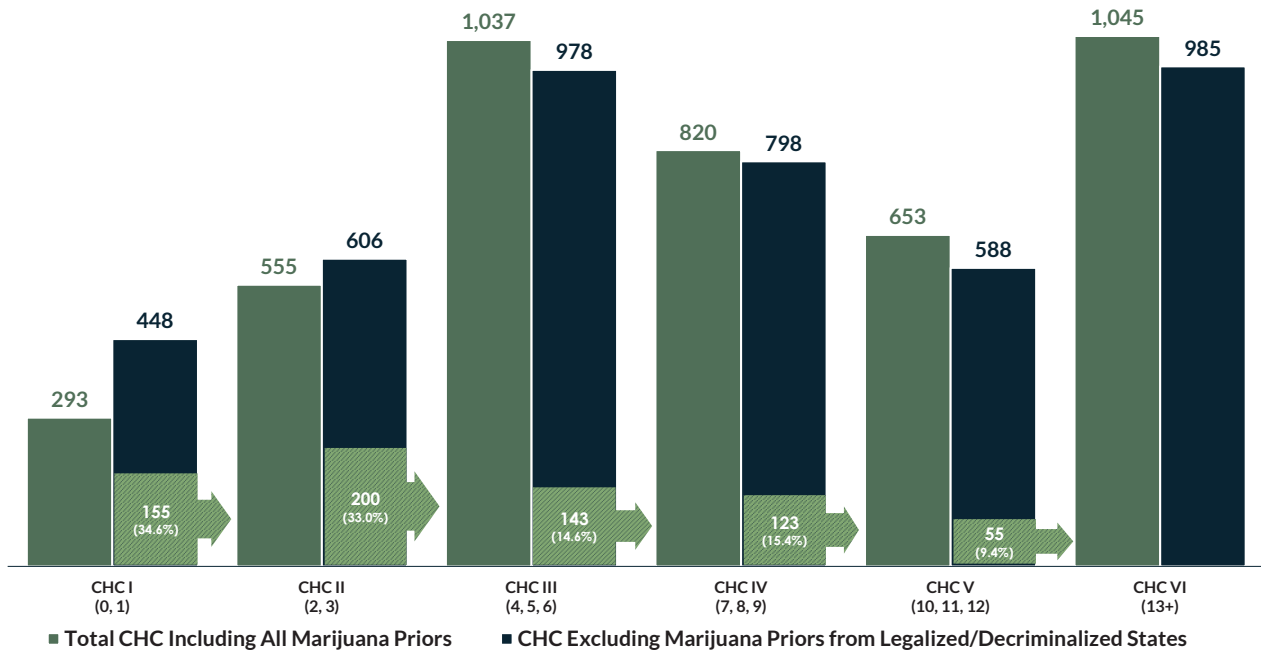
Legalized/Decriminalized Marijuana Possession

A total of 1,804 offenders were assigned points for prior marijuana possession sentences from states that have

legalized and/or decriminalized marijuana possession for personal use.⁵⁸ For 676 of these offenders, the points assigned to these prior sentences resulted in a higher criminal history category (Figure 15). Almost half of these 676 offenders

Figure 15. Criminal History Categories of Offenders with Marijuana Priors (Fiscal Year 2021)

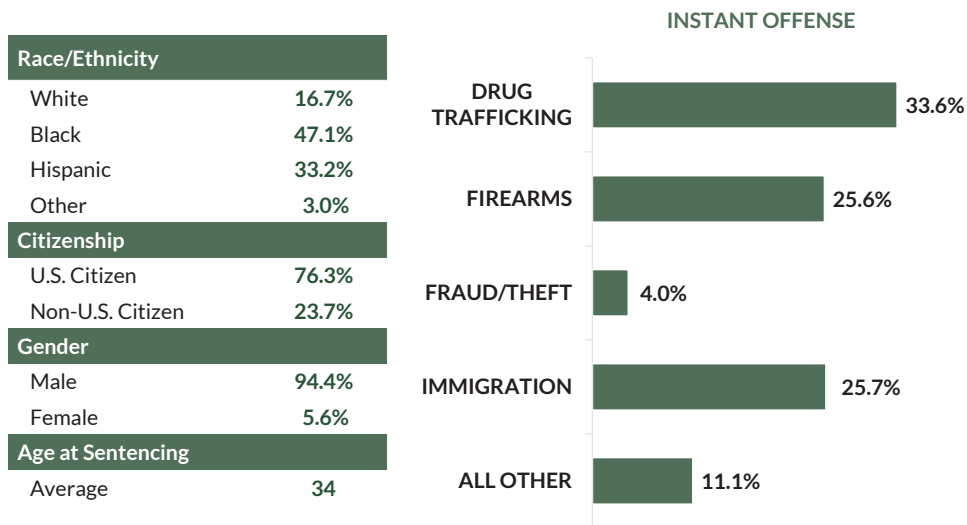
Impact of Points from States that Legalized or Decriminalized Marijuana Possession



were Black (47.1%), and one-third were Hispanic (33.2%). Over three-quarters of these offenders (76.3%) were U.S. citizens, and most (84.9%) were convicted of three

primary crime types: drug trafficking (33.6%), immigration (25.7%), or firearms (25.6%) (Figure 16).

Figure 16. Demographics and Crime Type of Offenders with Higher Criminal History Categories Due to Marijuana Priors from Legalized/Decriminalized States (n=676)



1,891 offenders were assigned points for prior marijuana possession sentences from states that have changed their laws by allowing for expungement or sealing of marijuana records and/or by legalizing or decriminalizing marijuana possession.

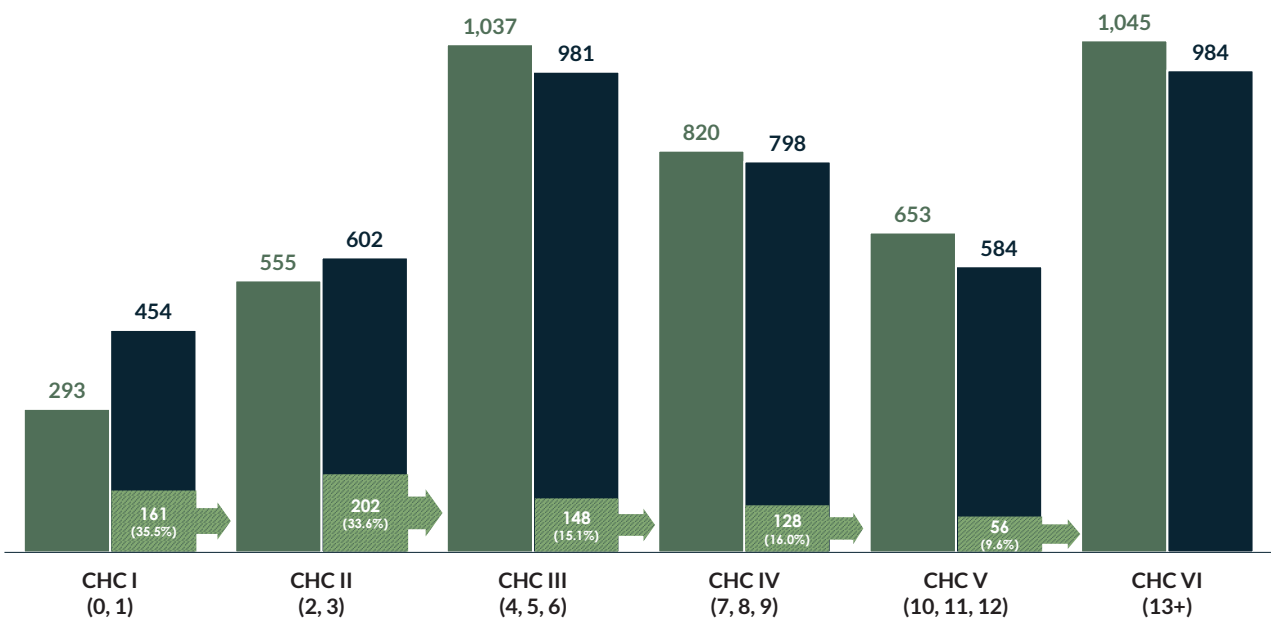
Combined Changes in Law

Combined, 1,891 offenders were assigned points for prior marijuana possession sentences from states that have changed their marijuana possession laws by allowing for expungement or

sealing of marijuana records and/or by legalizing or decriminalizing marijuana possession.⁵⁹ The points assigned to these prior marijuana sentences resulted in higher criminal history categories for 695 of these offenders (Figure 17). Almost half

Figure 17. Criminal History Categories of Offenders with Marijuana Priors (Fiscal Year 2021)

Impact of Points from States with Expungement/Sealing Laws and/or that Legalized/Decriminalized Marijuana Possession

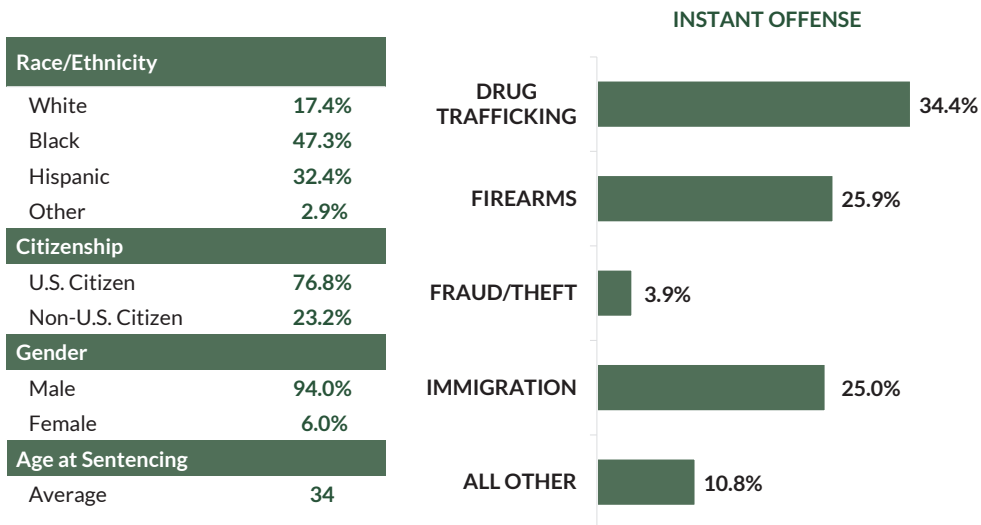


■ Total CHC Including All Marijuana Priors ■ CHC Excluding Marijuana Priors from States with Expungement/Sealing Laws and/or that Legalized/Decriminalized Marijuana Possession

of these 695 offenders were Black (47.3%) and one-third were Hispanic (32.4%). Over three-quarters of those offenders (76.8%) were U.S. citizens, and most (85.3%) were

convicted of three primary crime types: drug trafficking (34.4%), firearms (25.9%), or immigration (25.0%) (Figure 18).

Figure 18. Demographics and Crime Type of Offenders with Higher Criminal History Categories Due to Marijuana Priors from States and Territories with Expungement/Sealing Laws and/or that Legalized or Decriminalized Marijuana Possession (n=695)



Conclusion

Over the last several decades, the legal status of marijuana has been changing in many states and territories. Although simple possession of marijuana remains illegal at the federal level, President Biden recently pardoned current citizens and lawful permanent residents convicted of federal marijuana possession offenses and asked for a review of marijuana's scheduling under the Controlled Substances Act. Legislators recently proposed similar measures, and the U.S. Department of Justice has indicated that marijuana possession in personal use quantities is not a prosecutorial priority.

Commission sentencing data shows the impact of this evolving policy shift: the number of federal marijuana possession sentences dropped substantially in recent years, from 2,172 in fiscal year 2014 to only 145 offenders in fiscal year 2021. For the 70.1 percent of marijuana possession offenders who received a sentence of imprisonment in the last five fiscal years, the average prison sentence imposed was five months.

For federal offenders sentenced for any crime type, however, prior marijuana possession sentences—both federal and state—often affected their criminal history calculations under the guidelines. The Commission identified 4,405 offenders sentenced in fiscal year 2021 who received criminal history points under §4A1.1 for prior marijuana possession sentences, representing 8.0 percent of all offenders sentenced that year. About ten percent (10.2%) of these offenders (n=448) had no criminal history points other than those assigned for prior marijuana possession sentences. For 40.1 percent (n=1,765) of these offenders, the points assigned to their prior marijuana possession sentences resulted in a higher criminal history category, which in turn resulted in a higher sentencing guideline range.

Appendix

Marijuana Possession Laws in States and Territories as of September 30, 2021

State/Territory	Illegal for Personal Use	Medical Marijuana Provisions	Legalized for Personal Use	Decriminalized for Personal Use	Marijuana-Specific Expungement or Sealing Provisions
Alabama	ALA. CODE § 13A-12-214	ALA. CODE §§ 20-2A-1-20-2A-100	--	--	--
Alaska	--	ALASKA STAT. §§ 17.37.010-17.37.080	ALASKA STAT. § 17.38.020	--	--
American Samoa	AM. SAMOA CODE ANN. § 13.1022(A)	--	--	--	--
Arizona	--	ARIZ. REV. STAT. ANN. §§ 36-2801-36-2822	ARIZ. REV. STAT. ANN. § 36-2852	--	ARIZ. REV. STAT. ANN. § 36-2862
Arkansas	ARK. CODE ANN. § 5-64-419(b)(5)	ARK. CONST. amend. XCVIII	--	--	--
California	--	CAL. HEALTH & SAFETY CODE §§ 11362.5; 11362.7-11362.85	CAL. HEALTH & SAFETY CODE § 11362.1	--	CAL. HEALTH & SAFETY CODE § 11361.5
Colorado	--	COLO. CONST. art. XVIII, § 14; COLO. REV. STAT. ANN. §§ 25-1.5-106	COLO. CONST. art. XVIII, § 16	--	COLO. REV. STAT. ANN. § 16-17-102(2)
Connecticut	--	CONN. GEN. STAT. ANN. § 21A-408-410	CONN. GEN. STAT. ANN. § 21A-279A	--	--
Delaware	--	DEL. CODE ANN. tit. 16, §§ 4901A-4928A	--	DEL. CODE ANN. tit. 16, § 4764	DEL. CODE ANN. tit. 16, § 4764(i)
District of Columbia	--	D.C. CODE ANN. §§ 7-1671.01-7-1671.13	D.C. CODE ANN. § 48-904.01	--	--
Florida	FLA. STAT. ANN. § 893.13(1)(2)	FLA. STAT. ANN. § 381.986	--	--	--
Georgia	GA. CODE ANN. § 16-13-30(j)(1)	--	--	--	--
Guam	--	10 GUAM CODE ANN. § 122501	11 GUAM CODE ANN. § 8103	--	--
Hawaii	--	HAW. REV. STAT. §§ 329-121-329-131	--	HAW. REV. STAT. ANN. § 712-1249	HAW. REV. STAT. ANN. § 706-622.5(5)
Idaho	IDAHO CODE ANN. § 37-2732	--	--	--	--
Illinois	--	410 ILL. COMP. STAT. ANN. 130/1-130/210	410 ILL. COMP. STAT. ANN. 705/10-5; 705/10-10	--	20 ILL. COMP. STAT. ANN. 2630/5.2(i)
Indiana	IND. CODE ANN. § 35-48-4-11	--	--	--	--
Iowa	IOWA CODE ANN. § 124.401(5)(b)	--	--	--	--

Laws with an effective date after September 30, 2021 are excluded from this table. For jurisdictions that have both legalized and decriminalized marijuana possession, only the legalization provisions are listed here.

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State/Territory	Illegal for Personal Use	Medical Marijuana Provisions	Legalized for Personal Use	Decriminalized for Personal Use	Marijuana-Specific Expungement or Sealing Provisions
Kansas	KAN. STAT. ANN. § 21-5706 (b)(7)	--	--	--	--
Kentucky	KY. REV. STAT. ANN. § 218A.1422	--	--	--	KY. REV. STAT. ANN. § 218A.276
Louisiana	--	LA. STAT. ANN. § 40:1046	--	LA. STAT. ANN. § 40:966*	--
Maine	--	ME. REV. STAT. tit. 22, § 2421	ME. REV. STAT. tit. 28-B, § 1501	--	--
Maryland	--	MD. CODE ANN., HEALTH-GEN. §§ 13-3301-13-3316	--	MD. CODE ANN., CRIM. LAW § 5-601(C)(2)(II)	MD. CODE ANN., CRIM. PROC. § 10-105(a)(12)
Massachusetts	--	MASS. GEN. LAWS ANN. ch. 94I, §§ 1-8	MASS. GEN. LAWS ANN. ch. 94G, § 7	--	--
Michigan	--	MICH. COMP. LAWS ANN. §§ 333.26421-333.26430	MICH. COMP. LAWS ANN. § 333.27955	--	MICH. COMP. LAWS ANN. § 780.621e
Minnesota	--	MINN. STAT. ANN. §§ 152.21-152.37	--	MINN. STAT. ANN. § 152.027, subdiv. 4*	MINN. STAT. ANN. § 152.18, subdiv. 3
Mississippi	--	--	--	MISS. CODE ANN. § 41-29-139(C)(2)(A)	--
Missouri	--	MO. CONST. art. XIV, § 1	--	MO. ANN. STAT. § 579.015*	--
Montana	--	MONT. CODE ANN. §§ 16-12-501-16-12-533	MONT. CODE ANN. § 16-12-106	--	MONT. CODE ANN. § 16-12-113
Nebraska	--	--	--	NEB. REV. STAT. ANN. § 28-416(13)	--
Nevada	--	NEV. REV. STAT. ANN. §§ 678C.005-678C.860	NEV. REV. STAT. ANN. § 678D.200	--	--
New Hampshire	--	N.H. REV. STAT. ANN. §§ 126-X:1-126-X:12	--	N.H. REV. STAT. ANN. § 318-B:2-c	N.H. REV. STAT. ANN. § 651:5-b
New Jersey	--	N.J. STAT. ANN. §§ 24:6I-1-24:6I-56	N.J. STAT. ANN. § 2C:35-10a	--	N.J. STAT. ANN. § 2C:52-6.1
New Mexico	--	N.M. STAT. ANN. §§ 26-2B-1-26-2B-10	N.M. STAT. ANN. § 26-2C-25	--	N.M. STAT. ANN. § 29-3A-8
New York	--	N.Y. CANBS. LAW §§ 30-45	N.Y. PENAL LAW § 222.05	--	N.Y. CRIM. PROC. LAW § 440.46-A
North Carolina	--	--	--	N.C. GEN. STAT. ANN. § 90-95(D)(4)*	--
North Dakota	--	N.D. CENT. CODE ANN. §§ 19-24.1-01-19-24.1-40	--	N.D. CENT. CODE ANN. § 19-03.1-23(7)(d)*	N.D. CENT. CODE ANN. § 19-03.1-23(9)

**Effectively decriminalized. An infraction or misdemeanor offense, but with no possibility of incarceration.*

Weighing the Impact of Simple Possession of Marijuana

State/Territory	Illegal for Personal Use	Medical Marijuana Provisions	Legalized for Personal Use	Decriminalized for Personal Use	Marijuana-Specific Expungement or Sealing Provisions
Northern Mariana Islands	--	4 N. MAR. I. CODE §§ 53002(g), 53008(m)	4 N. MAR. I. CODE § 53070	--	--
Ohio	--	OHIO REV. CODE ANN. §§ 3796.01-3796.31	--	OHIO REV. CODE ANN. § 2925.11(C)(3)(a)*	--
Oklahoma	OKLA. STAT. ANN. tit. 63, § 2-402 (A)(1), (B)(2)	OKLA. STAT. ANN. tit. 63, §§ 420-430	--	--	--
Oregon	--	OR. REV. STAT. ANN. §§ 475C.770-475C.791	OR. REV. STAT. ANN. § 475C.337	--	OR. REV. STAT. ANN. § 475C.397
Pennsylvania	35 PA. STAT. AND CONS. STAT. ANN. § 780-113 (a)(31)	35 PA. STAT. AND CONS. STAT. ANN. §§ 10231.101-10231.2110	--	--	--
Puerto Rico	P.R. LAWS ANN. tit. 24, § 2404	P.R. LAWS ANN. tit. 24, §§ 2621-2626h	--	--	--
Rhode Island	--	21 R.I. GEN. LAWS ANN. §§ 21-28.6-1-21-28.6-19	--	21 R.I. GEN. LAWS ANN. § 21-28-4.01(c)(2)(iii)	--
South Carolina	S.C. CODE ANN. § 44-53-370(d)(4)	--	--	--	--
South Dakota	S.D. CODIFIED LAWS § 22-42-6	S.D. CODIFIED LAWS §§ 34-20G-1-34-20G-95	--	--	--
Tennessee	TENN. CODE ANN. § 39-17-418(a)	--	--	--	--
Texas	TEX. HEALTH & SAFETY CODE ANN. § 481.121	--	--	--	--
Utah	UTAH CODE ANN. § 58-37-8(2)(d)	UTAH CODE ANN. §§ 26-61A-101-26-61A-703	--	--	--
U.S. Virgin Islands	--	V.I. CODE ANN. tit. 19, §§ 774a-797	--	V.I. CODE ANN. tit. 19, § 607a	--
Vermont	--	VT. STAT. ANN. tit. 7, §§ 951-979	VT. STAT. ANN. tit. 18, § 4230a	--	VT. STAT. ANN. tit. 13, §§ 7601(4)(G), 7602
Virginia	--	VA. CODE ANN. § 54.1-3408.3	VA. CODE ANN. § 4.1-1100	--	--
Washington	--	WASH. REV. CODE ANN. §§ 69.51A.005-69.51A.900	WASH. REV. CODE ANN. § 69.50.4013	--	WASH. REV. CODE ANN. § 9.96.060(5)
West Virginia	W. VA. CODE ANN. § 60A-4-401(c)	W. VA. CODE ANN. §§ 16A-1-1-16A-16-1	--	--	--
Wisconsin	WIS. STAT. ANN. § 961.41(3g)(e)	--	--	--	--
Wyoming	WYO. STAT. ANN. § 35-7-1031(c)	--	--	--	--

*Effectively decriminalized. An infraction or misdemeanor offense, but with no possibility of incarceration.

Endnotes

- 1 See MELISSA K. REIMER, U.S. SENT'G COMM'N, *WEIGHING THE CHARGES: SIMPLE POSSESSION OF DRUGS IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2016)* [hereinafter *SIMPLE POSSESSION OF DRUGS REPORT*]. Commission materials cited herein are available on the Commission's website at www.ussc.gov.
- 2 For purposes of this report, decriminalized refers to making the punishment for marijuana possession under state or territory law a fine or other non-custodial penalty, with no possibility of incarceration. Legalized refers to removing criminal or civil penalties for marijuana possession that formerly existed under state or territory law.
- 3 21 U.S.C. § 812(c)(10).
- 4 *Id.* § 844(a).
- 5 Proclamation No. 10467, 87 FR 61441 (Oct. 6, 2022) (A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana).
- 6 See Statement on Marijuana Reform, 2022 DAILY COMP. PRES. DOC. 1 (Oct. 6, 2022).
- 7 See, e.g., *Responses to Questions for the Record to Judge Merrick Garland, Nominee to be United States Attorney General before the S. Comm. on the Judiciary 24* (Feb. 28, 2021) (statement of J. Merrick Garland) ("The Department of Justice has not historically devoted resources to prosecuting individuals for simple possession of marijuana.").
- 8 This group includes 25 states plus the District of Columbia, Guam, and the Northern Mariana Islands. Marijuana possession remained illegal in 25 states plus American Samoa, Puerto Rico, and the U.S. Virgin Islands. Some of these jurisdictions further changed their marijuana laws in the next decade.
- 9 This group includes 39 states plus the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands.
- 10 This report considers marijuana possession laws as of September 30, 2021. Changes to such laws that occurred after that date are not included in this analysis.
- 11 American Samoa, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, South Carolina, Tennessee, Texas, Wisconsin, Wyoming. See Appendix.
- 12 Alabama, Arkansas, Florida, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Utah, West Virginia. Jurisdictions with medical marijuana laws typically restrict use to certain qualifying conditions, require licenses or permits, limit the amount of marijuana that can be possessed, and control the formulation of the marijuana (e.g., tablets and capsules). Some jurisdictions also have laws allowing access to low-THC products. Those jurisdictions are not referenced here. Most states and territories that have decriminalized or legalized marijuana for personal use also have medical marijuana laws. See also Appendix.
- 13 States that have both decriminalized and legalized marijuana are counted as "legalized" for this

analysis. Delaware, Hawaii, Maryland, Mississippi, Nebraska, New Hampshire, Rhode Island, and the U.S. Virgin Islands have decriminalized possession of small amounts of marijuana. Louisiana, Minnesota, Missouri, North Carolina, North Dakota, and Ohio have effectively decriminalized possession of small amounts of marijuana. In states that have effectively decriminalized, possession is an infraction or misdemeanor offense, but with no possibility of incarceration. Quantity thresholds differ by jurisdiction. *See also* Appendix.

14 Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Guam, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, the Northern Mariana Islands, Oregon, Vermont, Virginia, Washington. *See also* Appendix. Such jurisdictions typically restrict use to persons 21 years of age or older and limit the allowable quantities—most commonly to one ounce or less, although amounts vary by jurisdiction.

15 Arizona, California, Colorado, Delaware, Hawaii, Illinois, Kentucky, Maryland, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Vermont, Washington. *See also* Appendix. Various states and territories also have general expungement and sealing laws applicable to a variety of offenses that could cover prior marijuana possession records.

16 21 U.S.C. § 812(c)(10). Schedule I controlled substances reflect a finding that “(A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.” *Id.* § 812(b)(1).

17 Marijuana (spelled “marihuana” in the statute) is defined in the Controlled Substances Act as “all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.” *Id.* § 802(16)(A). The Agriculture Improvement Act of 2018 removed hemp and hemp derivatives from the definition of marijuana. Pub. L. No. 115–334, § 12619, 132 Stat. 4490, 5018 (codified as amended at 21 U.S.C. § 802(16)(B)).

18 21 U.S.C. § 844(a).

19 *Id.*; 18 U.S.C. § 3559(a)(6).

20 21 U.S.C. § 844(a); 18 U.S.C. § 3559(a)(5).

21 Proclamation No. 10467, 87 FR 61441 (Oct. 6, 2022) (A Proclamation on Granting Pardon for the Offense of Simple Possession of Marijuana). The pardon also extended to simple possession of marijuana in violation of the D.C. Code. *Id.* The President directed the Attorney General, acting through the Pardon Attorney, “to develop and announce application procedures for certificates of pardon and to begin accepting applications in accordance with such procedures as soon as reasonably practicable.” *Id.*

22 *See* Statement on Marijuana Reform, 2022 DAILY COMP. PRES. DOC. 1 (Oct. 6, 2022). He also urged governors to pardon state offenses. *Id.*

23 *See, e.g.,* Cannabis Administration and Opportunity Act, S. 4591, 117th Cong. (2022); Marijuana Opportunity Reinvestment and Expungement (MORE) Act, H.R. 3617, 117th Cong. (2021); Clean Slate Act of 2021, H.R. 2864, 117th Cong. (2021).

24 *See* Memorandum from David W. Ogden, Deputy Att’y Gen., U.S. Dep’t of Just. to Selected U.S. Att’y’s (Oct. 19, 2009).

25 *See* Memorandum from James M. Cole, Deputy Att’y Gen., U.S. Dep’t of Just. to All U.S. Att’y’s (Aug. 29, 2013).

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26 See Memorandum from Jefferson B. Sessions, III, Att’y Gen., U.S. Dep’t of Just. to All U.S. Att’ys (Jan. 4, 2018).

27 See *Responses to Questions for the Record to Judge Merrick Garland, Nominee to be United States Attorney General before the S. Comm. on the Judiciary* 24 (Feb. 28, 2021) (statement of J. Merrick Garland) (“The Department of Justice has not historically devoted resources to prosecuting individuals for simple possession of marijuana . . . I do not think it the best use of the Department’s limited resources to pursue prosecutions of those who are complying with the laws in states that have legalized and are effectively regulating marijuana. I do think we need to be sure, for example, that there are no end runs around the state laws by criminal enterprises, and that access is prohibited to minors.”).

28 See SIMPLE POSSESSION OF DRUGS REPORT, *supra* note 1, at 3.

29 *Id.* at 1, 5 tbl.3.

30 Data shown in Figure 2 for fiscal years 2008 to 2013 was taken from the 2016 *Simple Possession of Drugs Report*. The methodology used in the 2016 *Simple Possession of Drugs Report* is slightly different from methodology used for this report. Among other things, for the 2016 report, marijuana cases included cases where the primary—but not necessarily the only—drug type involved was marijuana. *Id.* at 13 (discussing methodology used in 2016).

31 The Commission’s fiscal year 2017 through fiscal year 2021 datafiles were used for the data analysis. Simple drug possession cases were selected based on the primary crime type “drug possession.” See U.S. SENT’G COMM’N, 2021 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS app.A (2022) (providing more information about the primary type of crime variable).

32 Of these 2,417 offenders, the Commission estimates that 909 may benefit from the presidential pardon. The pardon applies to offenders sentenced under 21 U.S.C. § 844 who are current United States citizens or lawful permanent residents.

33 The Commission limited the first part of this analysis to simple drug possession cases in which the only drug type was marijuana. Cases that involved marijuana and another drug type were removed from the “marijuana” category and included with “all other drugs.” This analysis excludes eight offenders who were missing a drug type.

34 The Presentence Report (PSR) is the primary source of demographic information and guideline application information submitted to the Commission. Of the 2,417 cases involving offenders convicted of simple possession of marijuana in the last five fiscal years, the court waived the preparation of the PSR for 2,112 (87.4%) offenders. See also FED. R. CRIM. P. 32(c)(1)(A)(ii). The PSR was complete for 202 offenders (8.4%). The PSR was not submitted to the Commission for three offenders (0.1%), and for the remaining 100 offenders (4.1%), the PSR submitted was either a partial or alternate form. Due to the large number of waived PSRs, the data reported in this section is missing certain demographic information for some offenders: gender (n=48); race (n=241); citizenships (n=170); and age (n=14).

35 U.S. SENT’G COMM’N, *Guidelines Manual*, §2D2.1(a)(3) (Nov. 2021) [hereinafter USSG].

36 Most offenders received a 2-level reduction for acceptance of responsibility under §3E1.1(a). See USSG §3E1.1(a). The *Guidelines Manual* Sentencing Table combines the offender’s final offense level and CHC in a grid that sets forth recommended sentencing ranges. USSG Ch.5, Pt.A.

37 USSG Ch.5, Pt.A.

38 *Id.*

39 See COURTNEY SEMISCH, U.S. SENT'G COMM'N, ALTERNATIVE SENTENCING IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 4 (2009) (“[R]ates of alternative sentences are substantially different for United States citizen and non-citizen offenders.”).

40 This figure excludes 249 offenders whose PSRs were missing information needed to determine sentence relative to the guideline range.

41 Data about offenders in custody was based on the BOP’s population as of January 29, 2022. Offenders were identified as simple possession cases if they had at least one count of conviction under 21 U.S.C. § 844. Those offenders were divided into two groups: (1) those whose only count or counts of conviction was simple possession; and (2) those who had simple possession and additional counts of conviction.

42 Courts calculate a criminal history score for each offender by assigning one, two, or three points to any qualifying prior sentences. See USSG §§4A1.1(a)–(c), (e), 4A1.2.

43 Information about an offender’s criminal history is taken from the juvenile and adult criminal history convictions section of the PSR. For more information about the Commission’s criminal history datafile, see TRACEY KYCKELHAHN & EMILY HERBST, U.S. SENT'G COMM'N, THE CRIMINAL HISTORY OF FEDERAL OFFENDERS 14 (2018).

44 Of the 57,287 offenders sentenced in fiscal year 2021, 2,296 were excluded from the analysis because they did not have a PSR.

45 Various terms, including “marijuana,” “marihuana,” and “cannabis,” were used to search for prior convictions that potentially involved marijuana. The OCR technology may not have recognized all events, potentially resulting in an undercount. Index searching, which is used by most common search engines, stores relevant documents within a structured format optimized to return search results quickly and accurately.

46 Commission staff excluded prior sentences for “possession with intent to distribute” or similar language that suggested drug trafficking rather than simple possession. Staff also excluded prior sentences based on drugs other than marijuana or in addition to marijuana from the analysis, as well as prior sentences covering both simple possession of marijuana and another more serious offense. In addition, 186 offenders were excluded from the analysis for the following reasons: incomplete guideline application information, one or more events were missing criminal history point information, the total points mismatched between the criminal history datafile and the individual offender datafile, and the total points in the individual offender datafile mismatched with the expected criminal history category.

47 Only nine of the prior marijuana possession sentences were from territories. The Commission estimates that the presidential pardon may benefit 26 offenders sentenced in fiscal year 2021 who had prior sentences for federal marijuana possession convictions. These convictions nonetheless would be counted under the guidelines’ criminal history rules. See USSG §4A1.2, comment. (n.10) (“A number of jurisdictions have various procedures pursuant to which previous convictions may be set aside or the defendant may be pardoned for reasons unrelated to innocence or errors of law, e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction. Sentences resulting from such convictions are to be counted. However, expunged convictions are not counted. §4A1.2(j).”).

48 See USSG §4A1.1(c) (“Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.”).

49 See USSG §4A1.1(b) (“Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).”).

50 See USSG §4A1.1(a) (“Add 3 points for each prior sentence of imprisonment exceeding one year and one month.”). The convictions that received three points generally involved a large quantity of marijuana (*i.e.*, more than personal use quantity), a revocation of supervision that resulted in additional imprisonment (*see*

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USSG §4A1.2(k), and/or were not first offenses.

51 *See also* Appendix.

52 States that have both decriminalized and legalized marijuana are counted as “legalized” for this analysis.

53 USSG §§4A1.1(a)–(c), (e), 4A1.2.

54 USSG §4A1.1(d).

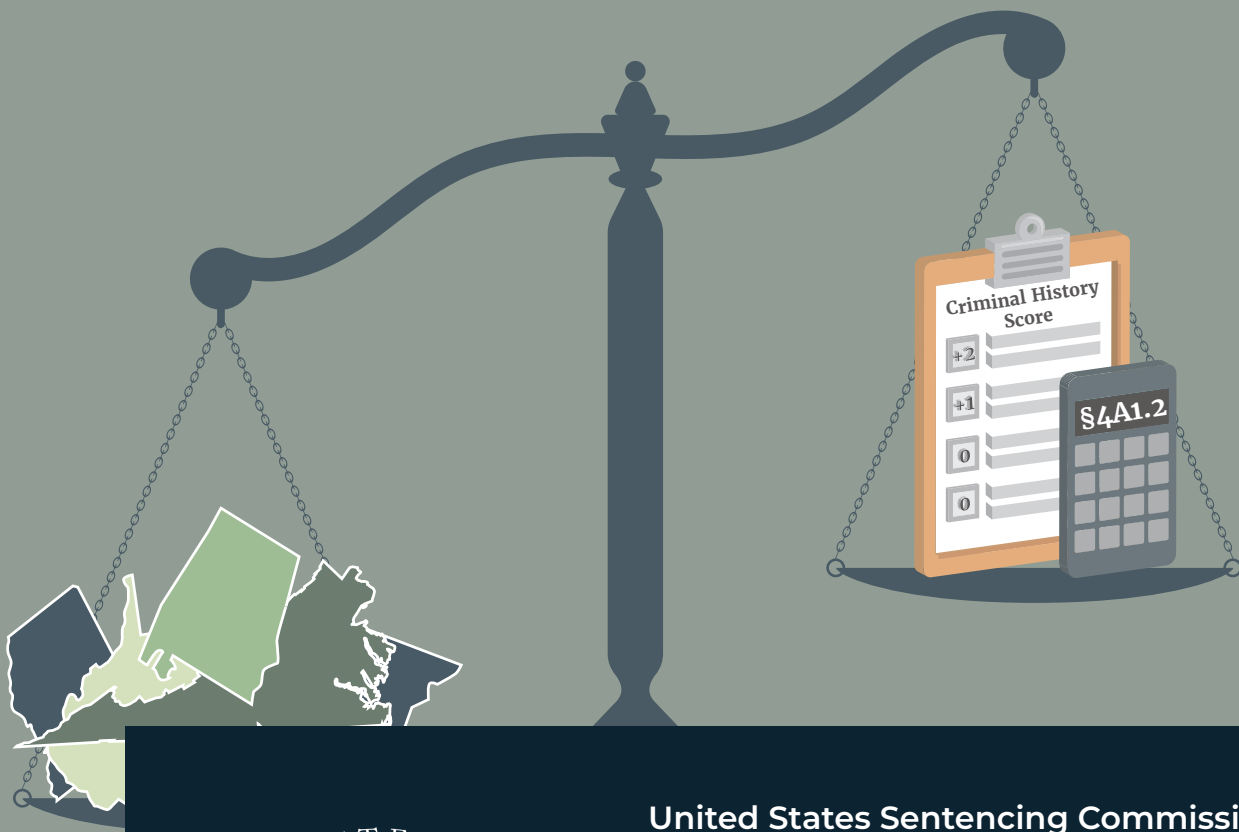
55 *See supra* note 15; *see also* Appendix.

56 *See supra* notes 13–14; *see also* Appendix.

57 This analysis excludes two offenders who were sentenced for a prior marijuana possession offense and the state or territory of conviction was unknown.

58 *See supra* note 57.

59 *See supra* note 57.



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